IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 357 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No :

STATE OF GUJARAT

Versus

AASIF SIDIQ @ AHMEDABADI CHOWK BAZAR,BHAGA TALAV,MEMAN

Appearance:

Mr. M.A.BUKHARI, A.P.P. for Petitioner

MR RAJESH M AGRAWAL for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/08/2000

ORAL JUDGEMENT

1. This revision is directed against the order dated 4.6.1998 of Additional Sessions Judge, Surat, granting an application of the accused No.1 moved under Section

231(2) of the Criminal Procedure Code. Shri M.A.Bukhari, learned A.P.P. has been heard. None appeared from the side of the respondent. The impugned order has been examined so also the provisions of Section 231(2) of the Cr.P.C.

2. It appears that in the trial before the learned Additional Sessions Judge, Surat, examination in chief of PW 2 Imtiaz Rasul Shaikh was completed. Thereafter the accused No.1 was required to cross examine this witness, but instead of cross-examining him an application under Section 231 Cr.P.C. was moved requesting that two other witnesses Azij Abbas and Mrs. Zohrabibi be examined and then cross examination of Imtiaz Rasul Shaikh, PW 2 may be conducted. This application was moved by accused No.1 with a view to avoid prejudice to the defence case of this accused.

3. Learned Addl. Sessions Judge in the impugned order has observed that Mrs. Johrabibi be examined and thereafter cross-examination of Imtiaz Shaikh and Mrs. Johrabibi may be conducted. He, however, did not permit examination in chief of Azij Abbas, the third witness, to be recorded.

4. Shri M.A.Bukari contends that the proper course for the learned Addl. Sessions Judge was to complete cross examination of Imtiaz Rasul and then to proceed to record the statement of other prosecution witnesses. No doubt under Section 231 (1) Cr.P.C. it is provided that on the date so frixed the judge shall proceed to take all such evidence as may be produced in support of the prosecution which means that it is choice of the prosecution to examine such witnesses in such serial number as it desires, but a discretion has been given to the Judge under Section 231(2) of the Cr.P.C. which provides that the Judge may, in his discretion, permit the cross examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross examination. Thus, under this section a discretion has been conferred by the statute upon the Judge to permit cross examination of any witness to be deferred untill any other witness or witnesses have been examined. Of course such discretion has to be exercised by a Judge judicially and not arbitrarily. The impugned order shows that the discretion was exercised by the learned Addl. Sessions Judge judicially and not arbitrarily. Consequently I do not find any reason or ground to interfere in the discretion exercised by the learned Addl. Sessions Judge.

5. I, therefore, do not find any substance in this Revision which is hereby dismissed.

sd/-

Date : August 24, 2000 (D. C. Srivastava, J.)

sas